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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/679,139	10/03/2000	Susan H. Matthews	17242-007300US	6541
20350	7590	08/03/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP			CONLEY, FREDRICK C	
TWO EMBARCADERO CENTER			ART UNIT	
EIGHTH FLOOR			PAPER NUMBER	
SAN FRANCISCO, CA 94111-3834			3673	

DATE MAILED: 08/03/2006

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 23

Application Number: 09/679,139
Filing Date: October 03, 2000
Appellant(s): MATTHEWS, SUSAN H.

Nena Bains
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/17/03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-3, 5-12, and 14-22 stand or fall together based upon independent claim 1.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

Art Unit: 3673

5,930,854	O'NEILL ET AL	08-1999
4,722,713	WILLIAMS	02-1988
3,911,512	PLATE	10-1975

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 5-6, 9, 11-12, 14-15, and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,546,620 to Matthews in view of U.S. Pat. No. 5,930,854 to O'Neill.

In reference to claim 1,9,11-12,14-15, and 17-22, Matthews discloses a pillow body comprising a filler material (col. 3 lines 32-43), and a medial region between a pair of opposing arms that form an open well (fig. 2 and 4) with a plurality of attachment mechanisms (50,50',50") to permit a toy to be coupled to the pillow. Matthews fails to disclose a bar that is positioned over the pillow. O'Neill discloses a play kit comprising a pillow body having a pair of curved bars 6 with their ends attached 16 to a removable pillow cover 12, and a toy coupled to the bars. It would have been obvious to one having ordinary skill in the art at the time of the invention to position the bars over the pillow body and employ a removable cover in order to stimulate the infant.

With regards to claims 2 and 11, wherein the bar is curved so that the middle section is disposed above the pillow (O'Neill; fig 1).

With regards to claims 3, 12, and 18-21, further comprising another bar (O'Neill; fig. 2) wherein each bar comprise two ends/feet (fig. 1-2).

With regards to claims 5 and 14, wherein the pillow includes four attachment mechanisms (16; O'Neill).

With regards to claims 6 and 15, further comprising at least one toy (34 O'Neill).

With regards to claim 17, wherein the attachment members comprise a loop material (Matthews; col. 4 lines 15-24).

Claims 7-8 and 16 are rejected under 35 U.S.C. 103 (a) as being unpatentable over U.S. Pat. No. 5,546,620 to Matthews in view of U.S. Pat. No. 5,930,854 to O'Neill, and further in view of U.S. Pat. No. 4,722,713 to Williams et al.

In reference to claims 7-8 and 16, O'Neill discloses all of the Applicant's claimed limitations except for the coupling mechanism having a strip of material and a snapping device. Williams discloses coupling mechanisms for suspending baby toys having a strip of material and a fastening member. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to employ the coupling mechanism taught by Williams in order to suspend a toy above a baby.

With regards to claim 7, the Examiner is taking Official Notice that snaps and hook and loop fasteners are art related equivalents and one functions in the same manner as the other.

Claim 10 is rejected under 35 U.S.C. 103 (a) as being unpatentable over U.S. Pat. No. 5,546,620 to Matthews in view of U.S. Pat. No. 5,930,854 to O'Neill, and further in view of U.S. Pat. No. 3,911,512 to Plate.

In reference to claim 10, Matthews discloses all of the Applicant's claimed limitations except for having a zipper. Plate discloses a pillow with a removable cover

Art Unit: 3673

having a zipper. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the use of a zipper in order to selectively open and close the cover.

(11) Response to Argument

Appellant argues that there is no motivation or suggestion to combine the references used in the final rejection. Both Matthews and O'Neill's devices are infant support/retaining devices and both deal with attaching toys thereto to stimulate the infant. Matthews' device has straps attached directly to the back portion to stimulate infants in the prone position. Matthews also discloses that the support device is also used for infants in the supine position but does not provide for stimulating the infant in that position. Matthews describes that all straps are attached to the support in a location wherein the toys are accessible by the baby in the prone position, such as, being only along the noted back portion (col. 1 lines 60-63). The reference does not describe the reason for only in the prone position, anywhere in the specification. In fact, Matthews states that this is preferable, and does not preclude toys being accessible where the infants are in the supine position (col. 1 line 60). Matthews also states that straps are positioned so as to not interfere ^{with} ~~if~~ the support function, thereby not being attached to the upper region (col. 1 line 63). O'Neill discloses a pillow that can be either "C" or "U" shaped onto which an infant can lie, wherein a bar 16 with toys is attached thereto for stimulating the infant in a supine position. Clearly if the frame work

Art Unit: 3673

6 were to be combined with Matthews the strap parts would be attached to loops 16 at the sides of the supports, such as in Matthews and the present invention, thereby not interfering with the support function of the pillow. Thus, both Matthews and O'Neill is concerned with stimulating an infant while lying down. Taking both references as a whole would provide motivation for providing toys for entertaining infants in their supine position. Furthermore, the central opening of Matthews is an open well that is open to a surface 42 of a mat 40 on which the pillow is adapted to rest such that an infant may lie directly on the surface 42 of the mat 40 when lying within the well. In describing Matthews, appellant states that the mat prevents the baby from contacting the floor when within the support. Clearly, the top surface 42 of the mat 40 is the surface.

The final rejection clearly points out that Matthews discloses pillow body as claimed except for the bar that is positioned over the pillow. Thus, O'Neill was used to teach the bar over the pillow, having attachment mechanisms to permit a toy to be coupled to and held above the pillow.

Appellant points out that Matthews' device is used for entertaining babies in the prone position (face down) by the use of straps 50 with toys attached thereto. The straps 50 are positioned only on the back section so that it does not interfere with the support function of the device (e.g., by not being attached to the upper region of the support). Matthews discloses when the infant is in a supine position (face up) the toys are merely "out of reach and not accessible" (col. 4, lines 25-55). However, O'Neill

Art Unit: 3673

provides a bar for entertaining the infant when they are in the supine position without the risk of removing toys or interfering with the support function of the device. Thus, both Matthews and O'Neill is concerned with stimulating an infant while lying down.

Taking both references as a whole would provide motivation for stimulating an infant in any position. The Appellant argues that Matthews' device allows access to the toys only when the infant is in the prone position. Appellant should note that providing toys suspended via bar 16 does not constitute access. The infant, if too young to be tactically playing with the toys can be only visually stimulated without given tactile access to the toys. The Appellant also argues that the only way to lie an infant face up on O'Neill's pillow is to deflate the annular ring to 60-70%. There is no such assertion in O'Neill. She discloses that the ring may be inflated to 60-70%. . . (col. 4, lines 46-55). There is no statement in O'Neill that states that the pillow must be used in this manner and the structure does not preclude the use in the supine position. It is possible to lay an infant thereon when the pillow is fully inflated or 50% inflated. However, appellant should note that such inflatability is not in question since O'Neill is used to modify Matthews, wherein Matthews only lacks the bar for which toys can be suspended.

As stated above, Matthews and O'Neill disclose an open well. Clearly, the central opening of Matthews is an open well that is open to a top surface 42 of a mat 40 on which the pillow is adapted to rest such that an infant may lie directly on the top surface 42 of the mat when lying within the well. In describing Matthews, appellant

Art Unit: 3673

states that the mat prevents the baby from contacting the surface when within the support. Clearly, the top surface 42 of the mat 40 is the surface. The argument that O'Neill does not disclose this limitation is irrelevant since O'Neill is used to show the bar on a pillow and not the specifics of the pillow. However, O'Neill does disclose the pillow can have either a "C" or "U" shape onto which an infant can lie (col. 1 lines 53-54).

In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Matthews and O'Neil clearly disclose supports that accommodate an infant with toys attached thereto. Matthews discloses a support 12 having an open well/cavity 30 defined by back section 14 and side sections (16,18) for receiving a user and permitting the user to lie directly on a surface 44 with a means to attach toys on the support to occupy the baby when on the surface. The support of Matthews also accommodates the baby in a supine position (fig. 5). O'Neill discloses at least one bar/framework 6 positioned over the pillow that accommodates toys above the support

Art Unit: 3673

as a means to visually stimulate the child (col. 4 lines 5-13) while the infant is supported in a supine position (col. 4 lines 50-52) directly on the support surface. O'Neill also discloses that the support device may be arranged to define an open well with a "C" shape or a "U" shape (col. 1 lines 50-55). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to employ the framework in order to visually stimulate the child while in the supine position.

Furthermore, it appears that the Appellant has argued against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With regards to claim 7, The Applicant does not adequately traverse the Official Notice first presented in the Final Rejection. Therefore, the limitation under Official Notice is now taken as admitted prior art.

Art Unit: 3673

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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July 20, 2006
~~August 19, 2004~~

Conferees

Heather Shackleford and Tom Will



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